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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of  
Streamlining the Commission's Antenna  
Structure Clearance Procedure

and

Revision of Part 17 of the Commission's  
Rules Concerning Construction, Marking,  
and Lighting of Antenna Structures

WT Docket 95-5

DOCKET FILE COPY ORIGINAL

COMMENTS OF AT&T CORP.

Mark C. Rosenblum  
Kathleen F. Carroll  
Ernest A. Gleit  
295 North Maple Avenue  
Room 3261B3  
Basking Ridge, NJ 07920  
908/221-3053

Cathleen A. Massey  
Vice-President - External Affairs  
McCaw Cellular Communications, Inc.  
1150 Connecticut Ave., N.W.  
Washington, D.C. 20036  
202/223-9222

Its Attorneys

March 21, 1995

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**COMMENTS OF AT&T CORP.**

AT&T Corp. ("AT&T"), by its attorneys, hereby submits its comments in the above-referenced proceeding.<sup>1/</sup> As a national provider of diverse communications services, AT&T has thousands of antennas affixed to structures it either owns or leases, and, therefore, strongly supports the Commission's efforts to streamline the antenna clearance process and reduce the associated administrative burdens.

**Introduction and Summary**

AT&T generally supports the proposals advanced in the Notice. The Commission's plan to streamline the current antenna structure clearance process by requiring only tower owners to register antenna structures will significantly reduce the existing administrative burdens on the

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<sup>1/</sup>In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedures and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures, Notice of Proposed Rulemaking, WT Docket No. 95-5 (rel. January 20, 1995) ("Notice").

Commission and licensees. The imposition of standardized registration and maintenance requirements on antenna structure owners primarily, coupled with the consolidation of disparate FCC antenna databases, will likewise decrease duplication of effort, improve the accuracy of structure data on file at the Commission, and increase public safety.

There are several additions and modifications to the Commission's proposals that would help achieve the goals set forth in the Notice. First, the Commission should clarify the responsibilities and potential liability of antenna structure tenants. Second, the Commission should make the proposed consolidated antenna structure registration database electronically accessible to registrants, licensee tenants, as well as the general public via dial-in modem access and Internet. Third, the Commission should allow antenna structure owners to register their structures electronically, thereby eliminating unnecessary paperwork, processing delays, and the potential for transcription errors, while facilitating a speedy and orderly central compilation of accurate antenna structure data. Fourth, the Commission should also incorporate into its rules the antenna structure measurement guidelines contained in the draft instructions to the proposed FCC Form 854.

The implementation alternatives presented in the Notice -- based on geography, tower height, or license renewal -- would impose unnecessary burdens on the Commission and on filers. To implement its proposed rules, the Commission should adopt a phased compliance schedule, requiring owners to register their structures by one of several deadlines, depending on the total number of structures owned. To simplify the registration process, owners of 50 or more antenna structures should be permitted to apply for a block of registration numbers and sequentially self-assign such numbers as they inspect and register their structures.

Finally, the Commission should explicitly absolve owners from any penalty for filing corrected structure data following remeasurement and resurveying of their structures pursuant to the proposed measurement and survey guidelines.

**I. The Commission Should Clarify the Responsibilities of Antenna Structure Owners**

Notwithstanding the Commission's intent to shift the primary responsibility for registration and maintenance to the owners of antenna structures,<sup>2/</sup> tenant licensees would retain a significant yet undefined obligation to ensure that the antenna structures are registered and maintained in accordance with FCC and FAA requirements.<sup>3/</sup>

While the proposal is an improvement over the current clearance process, in which "licensees are individually responsible for antenna structure maintenance, even in cases where they neither own nor have a legal right to maintain the structure,"<sup>4/</sup> the vague "shared responsibility" proposed in the Notice does little to relieve the existing maintenance and monitoring burdens of tenant licensees, who may lease space on thousands of structures across the country. Left undefined, this shared obligation would likely compel tenant licensees to retain all of the monitoring and verification precautions they now have in place. To ensure that its proposal does "not impose a greater net filing burden on the public,"<sup>5/</sup> the Commission should

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<sup>2/</sup>See, e.g., Notice at ¶¶ 4, 7.

<sup>3/</sup>Id. at ¶ 21 (Commission will continue to "recogniz[e] the ultimate shared responsibility of licensees, permittees, and owners").

<sup>4/</sup>Id. at ¶ 7.

<sup>5/</sup>Id. at ¶ 7.

clarify the compliance obligations of structure owners and specify the circumstances in which those obligations would devolve to tenant licensees.

**A. The Commission Should Clarify the Secondary Responsibility of Tenant Licensees**

In order to truly meet its goal to "decrease the number of entities affected" by the existing structure notification requirements, the Commission should clarify that tower owners and tenant licensees will not be jointly and severally responsible for complying with the registration and maintenance requirements under the proposed program. It should clarify that the "secondary" registration and maintenance responsibilities of tenant licensees arise only upon notification by the FCC that the structure owner is in default of its duties as bearer of "primary" compliance responsibilities. Only after such notification is received by the tenant licensees and the tenant is given a reasonable period of time to cure deficiencies should these licensees be held responsible for noncompliance. Under this approach, the responsibility of tenant licensees to ensure that their leased structures are in compliance with the FCC's regulations would truly be secondary and thus consistent with the stated objectives of the Notice.<sup>6/</sup>

While there are suggestions of support for this approach in the Notice,<sup>7/</sup> the suggestions are undercut by the Commission's broad endorsement of the "shared responsibility" of owners and licensees for compliance with antenna structure requirements. The Commission can

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<sup>6/</sup>For instance, the Commission seeks to "decrease the number of entities affected by [antenna structure] requirements," Notice at ¶ 7, and to "reduc[e] burdens on industry." Id. at ¶ 4.

<sup>7/</sup>See Notice at ¶ 21 ("In cases where reliance on the structure owner proves ineffective, the Commission would turn toward the tenant licensees and permittees to ensure that the structure is properly painted and lighted.").

eliminate this confusion by clarifying that the obligation to register and maintain antenna structures is exclusively the responsibility of the structure owner and is imputed to tenant licensees only upon the FCC's notification to these tenants of the owner's default and of the corresponding transfer of compliance responsibility to them. In cases in which a structure owner has defaulted on its compliance obligations, tenant licensees should be absolved from any liability or responsibility for lapses in compliance during the period preceding their receipt of FCC notification of the owner's default and until they have a reasonable opportunity to cure deficiencies. Absent these clarifications, the proposed registration program will have an effect exactly opposite of that intended by the Commission insofar as it adds structure owners to the list of entities jointly and severally responsible for the maintenance of antenna structures.

**B. The Commission Should Require Structure Owners to Provide Tenant Licensees a Copy of the Structure's Registration Notice Within Thirty Days of Its Issuance**

Whether or not the Commission decides to adopt a mechanism for the progressive transferral of structure registration and maintenance responsibilities from owner to tenants, the Commission should require antenna structure owners to provide copies of their structure's registration notice (on proposed FCC Form 854R) and modifications to the notice to all tenant licensees within 30 days of its receipt. Receipt of the registration notice will permit tenant licensees to confirm the structure's registration, verify the topographic and measurement data on file with the FCC, and monitor compliance with the FCC's painting and lighting requirements (as prescribed on the registration notice). In the event the tenant licensees detect any compliance failures on the part of the structure owner, they would then be able to demand modifications to the structure or the submission of corrected data to the FCC. Tenant licensees may also opt to

terminate their leases with an owner of a noncomplying structure in order to avoid having to risk "secondary" liability for any negative consequences resulting from having their antennae collocated on an errant structure.

The FCC should require provision of the Form 854-R to tenant licensees within 30 days of receipt even if licensees are not obligated to perform structure registration and maintenance except upon the failure of the structure owner. Although absolved of liability for noncompliance under those circumstances, tenant licensees will still have a considerable interest in knowing that their leased structures are registered and maintained in compliance with FCC and FAA lighting and painting requirements.

**C. The Commission Should Permit Antenna Structure Tenants to Voluntarily Assume Registration and Maintenance Requirements**

Large mobile service providers, like AT&T's subsidiary, McCaw Cellular Communications, Inc. ("McCaw"), frequently lease space on structures owned by government agencies, private citizens, and other entities that may not have the resources, expertise, or willingness to comply with the Commission's proposed antenna structure registration and maintenance requirements. The Commission itself acknowledges that "oftentimes the antenna structure owner is not a Commission licensee and therefore, has no vested interest in compliance."<sup>8/</sup>

In light of these facts, the Commission should permit tenant licensees to voluntarily assume the "primary" responsibilities otherwise borne by antenna structure owners under the proposed registration program. Specifically, the Commission should modify the first box of its

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<sup>8/</sup>Id. at ¶ 20.

proposed Form 854 to request the name of the "owner" or "responsible tenant licensee." The Commission should also modify the proposed Form 854 to require the signature of both the antenna structure owner and the relevant tenant licensee in instances where the latter is assuming the responsibilities of the former. Such a signature block should also include language verifying that both the owner and the tenant licensee have agreed to the voluntary delegation of duties from the owner.

Allowing antenna structure licensee tenants to voluntarily assume the obligations of the structure owner is firmly in the public interest, considering that such an option would ensure that many nonregistered and nonconforming towers could be brought "up to code" by volunteer tenant licensees who, as discussed above, may be mindful of their vague but substantial responsibility for the structure's compliance under the proposed registration program. Absent this option, many structures may remain inappropriately lit, painted, measured or registered for long periods of time, all at the expense and risk of the public in general, and aeronautical safety in particular.

## **II. In the Interest of Efficiency and Accuracy, the Commission Should Encourage Paperless Registration**

### **A. The Commission Should Make the Proposed Consolidated Antenna Structure Database Accessible to the Public Via Direct Dial-Up and Internet Access**

Given its goal of "facilitat[ing] detection and correction" of errors in the antenna structure data on file with the FCC,<sup>2/</sup> the Commission should provide the general public access to the proposed central antenna tower database via direct dial-up or Internet access. Such access would

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<sup>2/</sup>Id. at ¶ 6.

enable antenna structure owners and tenant licensees alike to verify that subject structures have been registered, and that all of the information appurtenant to those structures on file with the Commission is correct.

Access to the database should be complete, giving the public the ability to search for antenna structures by address or coordinates, by owner's name, by the names of tenant licensees, by registration number or by FAA aeronautical study number. Dial-in database users should also have wide-search access to the names and associated call-letters of all tenant licensees and structure owners, and should also have access to all of the information submitted to the FCC by structure owners on the structure registration form. In addition to permitting structure owners and tenants to verify the registration status and data on file for their towers, this comprehensive remote access will also enable prospective licensees to locate desirable antenna locations, coordinate efforts with other tenants already on target towers, and complete FCC applications accurately.

**B. The Commission Should Permit Antenna Structure Owners to Register Electronically**

To further the objective of "eas[ing] the burden on Commission resources and expedite application and notification processing,"<sup>10/</sup> the Commission should permit antenna structure owners (or responsible tenant licensees, as proposed supra) to register their structures electronically. Electronic registration would facilitate the prompt and accurate compilation of the proposed consolidated antenna structure database. Under this approach, structure registrants would access the registration database electronically in order to complete an uploaded template

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<sup>10/</sup>Id. at ¶ 23.

of proposed FCC Form 854.<sup>11/</sup> Commission staff would subsequently process, approve and clear the electronic form for incorporation into the database, without ever having to transcribe the information from hardcopy to electronic form. Clearly, such an approach would speed the processing of applications and antenna structure notifications and promote the accuracy of database data by eliminating errors attributable to the transcription of structure data by already overburdened Commission staff.

### **III. The Commission Should Implement a Phased Compliance Schedule and Permit Large Owners to Self-Assign Registration Numbers**

In lieu of the implementation alternatives presented in the Notice, the Commission should adopt a phased compliance schedule that imposes registration deadlines based on the total number of structures owned.<sup>12/</sup> Considering the difficulties associated with surveying and measuring many antenna structures across many states, owners of numerous structures will require an extended period of time to survey and measure each of its towers in order to ensure that the information they provide in their registration forms is correct. In addition to according registrants an adequate amount of time to prepare and file their registrations, this staggered registration schedule will also alleviate the overwhelming administrative burden on the Commission to accept and process over 70,000 antenna structure registrations.

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<sup>11/</sup>Registrants would simultaneously complete submit by mail the certification and signature portion of the registration form.

<sup>12/</sup>For instance, the Commission could require owners of five or fewer structures to register within 180 days of the effective date of the rules adopted in this proceeding. Owners of more than five but less than 15 towers could be required to file their registrations within 1 year of the effective date. Owners of 15 or more towers could be given 2 years to register.

To facilitate the registration of antenna structures of very large multiple-structure owners, the Commission should also implement a self-registration system. Owners of 50 or more antenna structures, for example, could be permitted to apply to the Commission for a block of registration numbers within 30 days after the effective date of the rules adopted in this proceeding. Upon obtaining the block of numbers, the owner would be required to survey and measure its registrable structures, as necessary, register the structures electronically through the procedure proposed above, and sequentially self-assign registration numbers to structures.<sup>13/</sup>

The option of self-registration for owners of 50 or more antenna structures would be substantially more efficient and expeditious than the process of submitting individual registration forms and awaiting the assignment of individual registration numbers by the Commission. Instead of having to process each of a large owner's registration forms individually, the Commission would need only to issue the registration number block at the front-end and process the electronic registrations at the back-end. This proposal would eliminate repetitive and resource-consuming paperwork for both the Commission and registrants, and would shift the basic task of assigning numbers to towers from the already resource-poor Commission to tower owners.<sup>14/</sup>

Phased-in implementation of registration based on number of structures owned by the registrant is likely to be more efficient than alternatives based on geographical location or tower

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<sup>13/</sup>Alternatively, the aeronautical study number assigned by the FAA to each antenna structure could also serve as the FCC registration number.

<sup>14/</sup>An owner eligible for a block of registration numbers would also be able to buy in bulk sequentially-numbered license plates for affixing to its structures, as the proposed rules require, rather than buying them one at a time as the Commission assigns the numbers associated with those structures.

height, particularly for owners of numerous antenna structures spread across several states or of varying heights. It is likely to be far more efficient for these owners to perform all of the work required for the registration of their structures at one time, rather than engage in repetitive and resource-wasting cycles covering several disparate filing periods. Although the Notice suggests the possibility of allowing owners or "groups of owners" to register commonly-owned structures "prior to their required filing window,"<sup>15/</sup> this assurance is of little comfort to owners of numerous antenna structures who would probably be unable to survey and register all subject structures by the first geographic or height-based filing deadline.

The "implementation upon renewal" alternative is equally problematic, for two reasons. First, this alternative would delay the full implementation of the proposed registration program and the completion of the proposed consolidated antenna structure database for ten years. This delay is clearly incompatible with the Commission's objective to "expedite application and notification processing."<sup>16/</sup> A ten-year delay in program implementation is anything but expeditious. Second, by requiring tenant licensees to "submit a Registration Number in order to apply for renewal,"<sup>17/</sup> this alternative effectively makes tenant licensees responsible for the registration of their leased structures. Such a result would be fundamentally inconsistent with the Commission's objective of making make tower owners "primarily responsible" for structure registration.

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<sup>15/</sup>Notice at ¶ 11.

<sup>16/</sup>Id. at ¶ 23.

<sup>17/</sup>Id.

**IV. The Commission Should Not Require Registrants to Periodically Renew their Registrations**

The Commission's proposal to require antenna structure owners to periodically renew their registrations "in order to maintain the integrity of the Registration database"<sup>18/</sup> would place an unnecessary and counter-productive burden on structure owners. The proposed registration program already requires owners to maintain the database's integrity by having to notify the Commission of any changes in height, coordinates, ownership, painting or lighting of the structure.<sup>19/</sup> Any further requirement to apply periodically for renewal of the registration would be superfluous.

**V. The Commission Should Eliminate the Proposed Form 854 Structure Construction Date Requirement and Incorporate the Topographical and Measurement Guidelines Prescribed in the Form's Draft Instructions into its Rules**

**A. The Commission Should Not Require Registrants To Furnish Construction Dates for Registered Structures**

The Commission should delete the requirement in Box 2 of the proposed FCC Form 854 to provide the construction date of the registered tower and Box 9 pertaining to historical information regarding original construction of the tower. This requirement would pose a significant financial and logistical burden for owners of numerous antenna structures who have acquired many of their structures from an array of entities or who have constructed facilities long ago. The original owners of these structures could have been individuals; local, state and federal government entities; other communications entities; or wholly unrelated companies.

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<sup>18/</sup>Id. at ¶ 16(d).

<sup>19/</sup>Id. at ¶ 7; see also Proposed FCC Form 854, Box 2.

Investigating the construction date for certain structures could require antenna structure registrants to expend considerable amounts of resources, given the unavailability of many structures' construction dates. Such effort would be grossly disproportionate to any benefit the Commission could reap from having construction dates on file. Accordingly, the Commission should delete these requirements from proposed antenna structure registration form.

**B. The Commission Should Incorporate the Draft Measurement and Survey Guidelines in Proposed Form 854 Into Its Rules**

The Commission should also incorporate the draft instructions to the proposed FCC Form 854 into its rules. These instructions constitute the first set of specific guidelines for the measurement and survey of all antenna structures associated with FCC service authorizations. The draft instructions are clear and sufficiently detailed to ensure the submission of accurate and standardized data in the course of structure registrations. In fact, they are much more comprehensive than the instructions accompanying the FAA Notice of Proposed Construction or Alteration Form (FAA Form 7460-1), which is the form used by licensees in all services to notify the FAA of structure construction or modification pursuant to Part 17 of the FCC's rules.<sup>20/</sup> Incorporating the draft instructions into the FCC's antenna structure registration rules would serve the public interest by eliminating inconsistencies between measurement guidelines in the various services, clarify measurement and survey standards for the purpose of registering new and existing towers, and facilitate the submission of accurate and standardized antenna structure data.

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<sup>20/</sup>The current version of FCC Form 854 is required to be filed by only "certain" FCC licensees and does not provide measurement instructions as detailed as those provided by the draft instructions to the proposed registration form.

**C. The Commission Should Absolve Registrants From Any Penalties for Submitting Structure Data That Corrects Information Filed With Initial Applications**

Considering that the draft instructions to the proposed registration form constitute the first set of service-blind structure survey and measurement instructions, it is conceivable that many owners of existing structures will have to file corrected structure data with their registrations for existing structures. The Commission should not penalize antenna structure owners for submitting such corrected data.

In the Notice, the Commission suggests that it anticipates the submission of corrected data, acknowledging that existing FCC structure databases "may contain inconsistent information about a single antenna structure because licensees on the structure may have submitted different site coordinates or structure parameters."<sup>21/</sup> The proposed registration form, at Box 2 ("Purpose of Application"), allows for the "modification of registered antenna structure" pursuant to a "correction of coordinates" or an "increase/decrease [in] overall height." These entries, however, only apply to coordinate corrections or height changes to structures that would have already been registered under the proposed program, and not to existing structures. In light of the fact that the draft measurement and survey instructions may be more comprehensive or different than those used by owners in their initial applications, and in order to encourage the submission of the most accurate structure data possible, the Commission should explicitly absolve owners from any liability associated with submitting corrected data and should modify the proposed registration form to permit the submission of such data.

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<sup>21/</sup>Notice at ¶ 6.

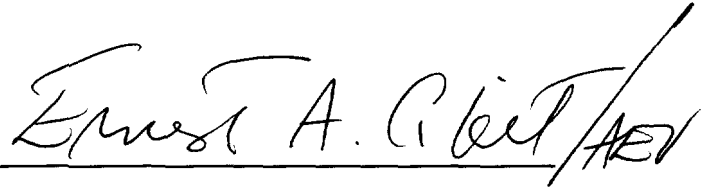
### Conclusion

For the foregoing reasons, AT&T urges the Commission to adopt its proposed streamlined antenna structure registration and clearance program, modified to the extent discussed above.

Respectfully submitted,

AT&T CORP.

By:

  
Mark C. Rosenblum  
Kathleen F. Carroll  
Ernest A. Gleit  
295 North Maple Avenue  
Room 3261B3  
Basking Ridge, NJ 07920  
908/221-3053

Cathleen A. Massey  
Vice-President - External Affairs  
McCaw Cellular Communications, Inc.  
1150 Connecticut Ave., N.W.  
Washington, D.C. 20036  
202/223-9222

Its Attorneys

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